IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 1924 of 1997

Date of Decision: 6.12.2006

Chhaju Ram ...Petitioner

Vs.

Satbir ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.B.R.Gupta, Advocate,
for the petitioner.

Ms.Vanita Sapra, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

By way of present revision petition the petitioner has challenged the order passed by the learned Rent Controller as well as of the learned Appellate Authority dismissing the eviction petition filed by the petitioner against the respondent-tenant.

The petitioner had filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short the Act) seeking eviction of the respondent herein on the grounds:- (i) non-payment of rent; (ii) that the respondent created nuisance; (iii) change of user, (iv) personal necessity and (v) that the respondent had diminished the value and

utility of the room in dispute.

The case set up by the petitioner was that the respondent was in possession of a room in dispute as tenant on payment of Rs.250/- per month excluding taxes and the respondent has not paid the arrears of rent from 1.12.1985 till the date of filing of the present petition. It was also claimed that the petitioner has changed the user of the building from residential to commercial as he has started his barber shop in the room. It was claimed that the value and utility of the building has been impaired as the petitioner had hung a mirror by putting nails in the wall. It was also claimed that the respondent tenant creates nuisance and started quarreling with the landlord when he demands rent and also threw hair in front of the room. Other ingredients for personal necessity were pleaded though no prayer was made for seeking eviction on the basis of bona requirement.

On the pleadings of the parties, the following issues were framed by the learned Trial Court:-

1. Whether the respondent is a tenant in the demised premises at the rental of Rs.250/- per men sem inclusive of taxes and if so, whether the tender was made is not a valid tender? OPP

2. Whether the respondent is liable to be ejected from the shop in dispute on the ground of change of user? OPP

3. Whether the act and conduct of the respondent is a nuisance to the petitioner and other neighbours? OPP

4. Whether the petitioner is estopped by his own act and conduct from filing the petition? OPR

5. Whether the petitioner has got no locus standi or cause

of action to file the petition? OPR

6. Whether the petition is bad for want of notice under section 106 of the Transfer of Property Act? OPR

7. Whether the respondent is entitled to special costs under Section 13 (7) of the Haryana Urban (Control of rent & Eviction) Act, 1973 ? OPR

7-A Whether the respondent is entitled to recover the excess amount of Rs.10,455.75 from the petitioner as alleged? OPR

7-B Whether the counter claim is barred by limitation? OPP

7-C Whether the counter claim is not valued properly for the purposes of court fee and jurisdiction? OPP

8. Relief.

The only issue which arises for consideration is issue No.1. i.e. the rate of rent of the tenant premises.

The learned Rent Controller in view of the evidence led by the petitioner and two witnesses examined by him came to the conclusion that the rate of rent was Rs.200/- per month and not Rs.250/- per month as claimed by the petitioner. As the respondent had paid the rent as demanded at the rate of Rs.250/- it was observed that a sum of Rs.2065/- was received in excess by the petitioner which was required to be refunded or adjusted in the future rent. In view of the findings on other issues the petition filed was dismissed.

The petitioner filed an appeal against the judgment of the learned Rent Controller before the learned Appellate Authority. The learned Appellate Authority by placing reliance on the plaint filed by the tenant for seeking injunction against the petitioner restraining him from evicting the

tenant except in due course of law came to the conclusion that the rate of rent was Rs.125/- per month and not Rs.200/- per month as assessed by the learned Rent Controller and accordingly, ordered the refund of excess amount.

It is worthwhile to note that the learned Appellate Authority took note that the affidavit filed by the petitioner in the suit for injunction to come to the conclusion that the rate of rent was Rs.125/- and not Rs.200/-. The operative part of the affidavit filed by the petitioner reads as under:-

> "I, the deponent, named above, do hereby solemnly declare and affirm as under:
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> 1. That the deponent undertakes not to dispossess the plaintiff except in accordance with due process of law. That the rate of rent mentioned by plaintiff in his plaint is wrong Boundaries given in plaint are also wrong.
>
> 2. That the undertaking given above is without prejudice of the right of the defendant to institute appropriate proceedings against the plaintiff for recovery of rent due as also for vacation of premises under Section 13 of Haryana Urban (Control) of Rent and Eviction) Act, 1973."

The learned Appellate Authority thereafter called for the file and noticed that in the plaint as the rate of rent mentioned was Rs.125/- which remained uncontroverted and accordingly, reversed the finding of the learned Rent Controller.

The finding of the learned Appellate Authority cannot be sustained. The reading of the affidavit filed by the petitioner clearly shows

that he has specifically denied the rate of rent mentioned in the plaint and there was no issue framed or adjudicated on this aspect of the matter in the suit for injunction. It was only in view of the affidavit filed by the petitioner that he would institute the proper proceedings against the plaintiff for the recovery of rent due as also for eviction of the premises, the suit for injunction was disposed of. Otherwise also, it was not open to the learned Appellate Authority to look into the plaint which was not brought on record by way of evidence or even by way of additional evidence. Thus, the finding by the learned Appellate Authority qua the rate of rent is perverse on the face of it and is otherwise contrary to the evidence brought on record for this purpose. Accordingly the finding of the learned Appellate Authority on the question of rent is reversed and that of learned Rent Controller is restored.

Consequently, this revision petition is partly allowed while the order of the Appellate Authority is set aside and that of the learned Rent Controller is upheld.

Disposed of in the above terms.

(Vinod K.Sharma)
Judge

6.12.2006
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